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Before the
Federal Communications Commission
Washington, DC 20554

FCC Mailroom

In the Matter of

EB Docket No. 03-152

WILLIAM L. ZAWILA

Facility ID No. 72672

Permittee of FM Station KBGS,
Coalinga, California

AVENAL EDUCATIONAL SERVICE, INC.

DOCKET FILE COPY ORIGINAL

Facility ID No. 3365

Permittee of FM Station KAAX,
Avenal, California

**CENTRAL VALLEY EDUCATIONAL
SERVICES, INC.**

Facility ID No. 9993

Permittee of FM Station KYAF,
Firebaugh, California

**H. L. CHARLES d/b/a FORD CITY
BROADCASTING**

Facility ID No. 22030

Permittee of FM Station KZPE,
Ford City, California

**LINDA WARE d/b/a LINDSAY
BROADCASTING**

Facility ID No. 37725

Licensee of FM Station KZPO,
Lindsay, California

TO: The Commission

REPLY TO

ENFORCEMENT BUREAU'S OPPOSITION TO

PETITION FOR RECONSIDERATION [FCC 17-6]

Central Valley Educational Services, Inc. (CVES or Central Valley) and

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1

Avenal Educational Services, Inc. (AES or Avenal) by their attorney (collectively, "Petitioners") here respond to the Opposition submitted on March 22 by the Enforcement Bureau ("Opp."). Objections in the Opposition are purely procedural. The Bureau's timeliness argument and other arguments are meritless.

Purpose of the Application for Review

Petitioners support the bottom-line result of FCC 17-6, denying an application for review by William L. Zawila. Our sole purpose in seeking review is to request that the Commission modify its decision to delete all of para. 4 and paras. 11-14, to make clear that it is making no conclusion of law here regarding timeliness of incorporation. These sections of the Order are inessential to the holding, as such are *dicta*, are highly prejudicial to Petitioners, and violate Petitioners' rights to due process of law. The Opp. does not address these concerns in any way. The Enforcement Bureau's criticism is limited to procedural technicalities. Upon close examination, none of them is a bar to full consideration of the petition on the merits.

The Petition for Reconsideration Was Timely Filed.

As related in the attached declaration of undersigned counsel the application for review was submitted, as an original and four copies, by Overnight Federal Express, to arrive on the thirtieth day after release of the Order, March 3, 2017. The FedEx tracking ticket confirms delivery to the Secretary's courier delivery drop in Capital Heights, MD, at 11:15 a.m. On March 3. The stamp-and-return copy,

included with the filing, was stamped "Received and inspected March 3, 2017, FCC Mailroom" and mailed back to counsel. As the Opp. Stated, "... Section 1.7 of the Rules expressly states that pleadings are 'considered to be filed with the Commission **upon their receipt** at the location designated by the Commission.'" [emphasis supplied by the Opp.] The filing was timely.¹

Lack of Service on Parties in the Prior Hearing is no Bar to Consideration.

The Opp., top of page 4, argues that the Petition should be dismissed because it was not served on the Enforcement Bureau, the Presiding Judge or the other parties to the proceeding. This reflects a misunderstanding of the procedural setting. The presiding (and chief) administrative law judge dismissed Petitioners from the case on July 25, 2016, FCC 16M-23. With the Commission's Memorandum Opinion and Order on February 1, 2017, dismissing and denying an appeal of that Order by William L. Zawila (Zawila), the dismissals have become final. The docketed hearing case goes on, but Petitioners are not parties to it and have no right to participate, to file papers or be served with papers. Equally, Petitioners are under no obligation to the judge or the parties to participate in any way. We support the Judge's core decision: our dismissals from the case. The matter for consideration here is between us and the Commission – a timely request to modify the ruling, to avoid matters that need not have been considered, and that

¹ We cannot speculate as to how the Enforcement Bureau came into possession of a copy stamped with the wrong date. It would be preferable if the Secretary's office made it a point to date-stamp each and every copy of an on-paper submission immediately, at the location of receipt.

are highly prejudicial to Petitioners as we pursue normal processing of applications.

Petition is Not Barred by Lack of Earlier Application for Review.

The Opp. at para. 7 claims that Petitioners could have ourselves appealed the Order FCC 15M-23, so that, by failing to do so we forfeited our right to have this matter considered. This also is to ignore the procedural setting of the Order. The judge, at the behest of the Enforcement Bureau, had added an issue of basic qualification against our permittees, based on the lack of observance of corporate formalities prior to filing initial applications in 1987 and 1988. Under the rules, it was up to the judge to create a partial pleading schedule for proposed findings and conclusions, Sec. 1.263 of the Rules; and then to issue an initial or recommended decision, Sec. 1.267. Instead, without notice to Petitioners he dismissed them from the case. Strongly supporting that result, and welcoming the new status as non-parties to the proceeding, we also perceived no avenue of appeal that would disable his non-binding statements of opinion, made in concert with the dismissal.²

In the absence of any application for review, we believed the judge's opinions regarding basic qualification did not preclude a subsequent cure, by converting the stations to commercial operation. We even informed the judge that we were so acting, by *ex parte* letter. The judge then issued an Order, doubling down on his

2 As a party the Enforcement Bureau could have petitioned the judge for summary decision on the qualification issue, under Sec. 1.251. Or it could have sought reconsideration or appeal from the dismissal action, to send these Parties back into the hearing where the judge could conduct a lawful and complete adjudication in compliance with the Rules and with due process of law. The Bureau did none of this.

claims by stating that such a change would require an amendment to the construction permits, and Commission approval, FCC 16M-26, rel. on September 26, 2016. We promptly filed such minor amendments. His subsequent order, by stating that the dismissal was “without prejudice” supported our contention here that new proceedings would be required to make an adverse decision on the basic qualifying issue. Thus no application for review was warranted.

The subsequent event, necessitating this application for review, was the Commission's adoption of a distorted and incomplete view of the qualification issue, based on sketchy briefing of the issue in Zawila's deservedly failed appeal.

We request a modification of the decision because the full Commission is not bound by the judge's observations, made outside the rules and without due process, at the dismissal and, shockingly, amplified by a published comment made after the dismissal when Petitioners no longer were parties. Going forward, such adverse findings may lawfully may be made in one of only two ways: (a) by a fresh hearing designation order, as the judge himself recognized in stating that the ruling was “without prejudice,” or (b) as we would hope, in conjunction with further processing of applications at the Media Bureau, up to and including future applications for license.

Petitioner Have Carefully Limited the Relief Sought.

The Opp. at para. 6 states that the Petitioners are doing nothing more than raising new argument challenging the Order, based on information already known

or in hand. As to “new,” our contentions regarding the applicants (a) being in compliance with then-existing law (pp. 4-6), (b) being subject to different treatment being in the non-reserved band (pp. 6-8)³, and (c) deserving protection from enlargement petitions filed years, if not decades after the fact (pp. 9-11) --- all were briefed to the judge in detail. That he disagreed, in the end, does not bind the Commission to his words. If put to the task (under the Rules) of entertaining submissions of proposed findings and issuing an initial decision with full findings of fact and conclusions of law, the judge possibly would have seen this our way at last.

Given what happened instead, the Commission is under no duty to ratify an incomplete record. The requested modifications avoid that, with a minimum of disturbance to any other proceeding, including the case from which Petitioners are thankfully gone. We are not even asking the Commission to agree or disagree. Our plea is that a judicious silence on a matter that need not be decided is the way to go.

Conclusion

Our core contention is that the qualifying issues the Bureau sought and obtained from the judge were never resolved by him in the manner required by the Rules and due process of law. We do not propose to resolve them here either.

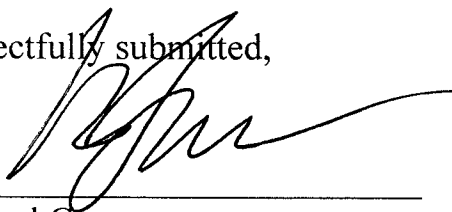
If the Commission modified or vacates paras. 4 and 11-14 our permittees will still have the burden of showing to the Media Bureau their overall compliance with

³ In the language we seek to vacate, and elsewhere, the MO&O does not even mention, let alone analyze Petitioners' status as applicants in the non-reserved band.

Commission rules and policies upon the filing of license applications, which we hope to file. One of the stations, KAAX, has been on the air for a decade providing valuable first community service.

For the reasons stated, the Commission should modify or vacate its decision in the particular manner we request.

Respectfully submitted,



Dated: March 27, 2017

Michael Couzens
*Attorney for Central Valley Educational
Services, Inc. and Avenal Educational
Services, Inc.*

Michael Couzens, Attorney at Law
6536 Telegraph Avenue, Suite B201
Oakland, CA 94609
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E-mail: cuz@well.com

DECLARATION

I, Michael Couzens, make the following declaration:

I am attorney for Avenal Educational Services, Inc. and Central Valley Educational Services, Inc. In that capacity I filed a Petition for Reconsideration of a Memorandum Opinion and Order of the Federal Communications Commission, FCC 17-6, being nineteen pages and certificate of service.

On March 2, 2017, I personally prepared a package for FedEx containing the original Petition for Reconsideration, four copies, a stamp-and-return copy and a postage-paid return envelope. The package was addressed to the Secretary's courier mail drop address, in Capitol Heights, MD (US Airbill copy, Attachment A).

A FedEx tracking ticket exists for this package (Attachment B), confirming that it was signed for at "Receptionist / Front Desk" upon delivery March 3, at 11:15 a.m.

A few days later I received my stamp-and-return envelope by mail (Attachment C) with the date stamp, "Received & Inspected, March 3 2017, FCC Mailroom."

The foregoing is sworn to, under the penalties for perjury provided in the laws of the United States.

Dated: March 24, 2017

By: _____

Michael Couzens

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TO: The Commission

PETITION FOR RECONSIDERATION
BY AVENAL EDUCATIONAL SERVICES, INC. AND CENTRAL VALLEY
EDUCATIONAL SERVICES, INC.

Michael Couzens Law Office
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March 3, 2017.

CERTIFICATE OF SERVICE

I, Clay Leander, certify that copies of the foregoing Petition for Reconsideration on March 27, 2017, were sent by First Class Mail, with postage fully prepaid, to the following:

Hon. Ajit Pai, Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Hon. Mignon Clyburn, Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Hon. Michael O'Rielly, Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

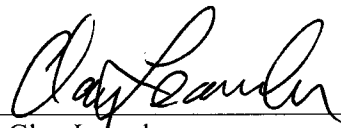
Brendan Carr,
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By: _____


Clay Leander